

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGONALD D. PHILLIPS,	)	No. C 04-2975 CW (PR)
	)	
Petitioner,	)	
	)	ORDER DENYING PETITION FOR WRIT
v.	)	OF HABEAS CORPUS
	)	
JOE MCGRATH, Warden,	)	
	)	
Respondent.	)	
_____	)	

INTRODUCTION

Petitioner Regonald D. Phillips, a state prisoner incarcerated at Pelican Bay State Prison, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the execution of his sentence. After denying Respondent's motion to dismiss the petition, the Court ordered Respondent to show cause why the petition should not be granted. Respondent has filed an answer to the petition and a memorandum of points and authorities and exhibits in support thereof. Petitioner has filed a traverse to the answer and exhibits in support thereof.

Having considered all of the papers filed by the parties, the Court DENIES the petition for a writ of habeas corpus on all claims.

BACKGROUND

I. Procedural Background

Petitioner was convicted of robbery and false imprisonment on March 26, 1992. He was sentenced to twenty years and four months in state prison. On appeal, the convictions were affirmed, but the abstract of judgment was corrected to reflect a sentence of

1 seventeen years and eight months. (Resp't Ex. A, Abstract of  
2 Judgment - Prison Commitment.) Petitioner does not challenge the  
3 validity of his underlying conviction or sentence. Rather, he  
4 challenges the execution of his sentence, alleging that prison  
5 officials have miscalculated his Earliest Possible Release Date  
6 (EPRD) (docket no. 1).

7 In an Order dated November 22, 2004, the Court liberally  
8 construed Petitioner's federal claim as one "that state prison  
9 officials have computed the time credits to which he is entitled  
10 improperly, resulting in the miscalculation of his release date and  
11 him being held beyond the expiration of his sentence" (docket no.  
12 6). The Court directed Respondent to show cause why relief should  
13 not be granted.

14 On December 12, 2004, Respondent filed a motion to dismiss the  
15 petition on the grounds that: (1) Petitioner had failed to exhaust  
16 his state remedies; (2) the petition was barred by the statute of  
17 limitations; and (3) the petition failed to allege sufficient facts  
18 to state a claim upon which relief may be granted (docket no. 7).<sup>1</sup>

19 On January 10, 2005, Petitioner filed an opposition to the motion  
20 to dismiss (docket no. 10). On August 24, 2005, the Court denied  
21 Respondent's motion to dismiss (docket no. 11). The Court found  
22 that Petitioner stated cognizable claims for relief based on:

23 (1) his allegations that he did not receive accurate  
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25 <sup>1</sup> Respondent's answer re-alleges the following assertions:  
26 (1) the petition is time-barred under the one-year statute of  
27 limitations for federal habeas corpus petitions and (2) the petition  
28 fails to allege sufficient facts to state a claim upon which relief  
may be granted. These allegations have already been addressed in the  
Court's Order Denying Motion to Dismiss dated August 24, 2005 (docket  
no. 11).

1 credits for a twenty-eight month period during which he  
2 worked and during his periods of SHU confinement from  
3 1992-1995, in 1996 and in 2001; (2) the facts addressed  
4 by the Director's Level Review decisions issued on May  
5 15, 1996,<sup>2</sup> February 21, 1997, and June 27, 2002; and  
6 (3) the Computation Review Hearings of January 13, 1998,  
7 and March 15, 2002, and any subsequent related  
8 administrative appeals and State habeas petitions.

9 (Aug. 24, 2005 Order at 6-7 [footnote added].) The Court ordered  
10 Respondent to respond to the petition and requested Respondent's  
11 "assistance in providing a clear and concise summary of the  
12 relevant facts and calculations for all concerned." (Id. at 7.)  
13 On December 13, 2005, Respondent filed an answer (docket no. 18).  
14 On January 11, 2006, Petitioner filed a traverse to the answer  
15 (docket no. 20).

16 II. Applicable Sections of the California Penal Code and  
17 Title 15 of the California Code of Regulations

18 A. California Penal Code § 2933

19 "It is the intent of the legislature that persons convicted of  
20 a crime and sentenced to the state prison under [California Penal  
21 Code] § 1170 serve the entire sentence imposed by the court, except  
22 for a reduction in the time served in the custody of the Director  
23 of Corrections for performance in work, training or education  
24 programs established by the Director of Corrections." (Id.)  
25 Pursuant to California Penal Code § 2933, inmates may participate  
26 in qualifying work, training and educational programs for the  
27 privilege of earning "worktime credit" against their sentences.  
28 Cal. Penal Code § 2933(a). "For every six months of full-time

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<sup>2</sup> The record shows that the correct date Petitioner's appeal was denied by the Director's level is May 17, 1996 and not May 15, 1996. (Pet'r Ex. F, Director's Level Appeal Decision, log no. 95-5507, dated May 17, 1996.)

1 performance in a credit qualifying program, as designated by the  
2 director, a prisoner shall be awarded worktime credit reduction  
3 from his or her term of confinement of six months." Id. Every  
4 prisoner who refuses to accept a full-time, credit-qualifying  
5 assignment or who is denied the opportunity to earn worktime  
6 credits pursuant to California Penal Code § 2932(a) shall be  
7 awarded no worktime credit reduction. Id. Prisoners cannot  
8 receive more than six months' credit reduction for any six-month  
9 period. Id. With exceptions for the commission of certain  
10 violations, inmates who commit disciplinary violations may forfeit  
11 earned credits under California Penal Code § 2932 and may seek  
12 restoration of credits pursuant to California Penal Code § 2933(c).  
13 This section provides that upon application and following  
14 completion of the required time period free of disciplinary  
15 offenses, an inmate's "forfeited credits eligible for restoration  
16 under the regulations for disciplinary offenses . . . shall be  
17 restored unless, at a hearing," it is determined that the inmate  
18 refused or failed to perform in a credit-qualifying assignment, or  
19 "extraordinary circumstances are present that require that credits  
20 not be restored." Cal. Penal Code § 2933(c). Extraordinary  
21 circumstances are defined in the regulations adopted by the  
22 Director of the California Department of Corrections and  
23 Rehabilitation (CDCR).<sup>3</sup> Id. Although inmates may appeal the  
24 findings through the CDCR review procedure, restoration of credit  
25 shall be at the discretion of the director. Id.

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27       <sup>3</sup> While the CDCR was previously known as the California  
28 Department of Corrections (CDC), the Court will refer to it as the  
CDCR in addressing the merits of this petition.

1 In essence, a qualifying inmate can earn one day of credit for  
2 each day of service. Id. However, California Penal Code § 2933  
3 provides that prisoners have no right to earn worktime credits.  
4 "Worktime credit is a privilege, not a right." Cal. Penal Code  
5 § 2933(b). Furthermore, California has not created a protected  
6 liberty interest in earning credits pursuant to § 2933. See id.;  
7 Kalka v. Vasquez, 867 F.2d 546, 547 (9th Cir. 1989) ("§ 2933 does  
8 not create a constitutionally protected liberty interest").  
9 California Penal Code § 2933 specifically contemplates that not all  
10 inmates will be assigned to a credit-qualifying program. Toussaint  
11 v. McCarthy, 801 F.2d 1080, 1094-95 (9th Cir. 1986) ("[e]xamination  
12 of § 2933 leads to the conclusion that prisoners have no right to  
13 earn the one-for-one worktime credits provided by that section").  
14 In fact, prisoners are not entitled automatically to participate in  
15 worktime credit programs, People v. Rosaia, 157 Cal. App. 3d 832,  
16 848(1984), and there is no guarantee that work programs will be  
17 available. People v. Caruso, 161 Cal. App. 3d 13 (1984).

18 B. Title 15, California Code of Regulations §§ 3040, 3044

19 Title 15, of the California Code of Regulations section 3040  
20 obliges all "able-bodied" prisoners to work and/or obtain an  
21 education. California Code Regs. tit. 15, § 3040(a). Thus, all  
22 prisoners are placed in a work/training group, designated A-1, A-2,  
23 B-1, B-2, and so on. Id. § 3044.

24 Inmates in work group A-1 are eligible for full-time  
25 educational and work assignments, while those in work group A-2 are  
26 deemed "willing but unable to perform" a full-time assignment, and  
27 either are put on a waiting list for a full-time assignment or are  
28 waiting for an adverse transfer to a different institution. Id.

1 § 3044(b)(2), (3). Inmates in work group A-1 are eligible to earn  
2 California Penal Code § 2933 worktime credits, i.e., one day credit  
3 for each day assigned to this work group. Id. § 3044(b)(2).

4 Inmates in work group A-2 are eligible to receive half-time credit,  
5 i.e., one day credit for every two days the inmate is "willing but  
6 unable to perform" a full-time assignment. Id. § 3044(b)(3).

7 Inmates in work group C are more commonly referred to as C-  
8 status" inmates. C-status is the CDCR's classification for inmates  
9 who fail to comply with or whose conduct interferes with prison  
10 program requirements. Id. § 3044(b)(5)(A), 3044(f). C-status  
11 classification is determined by a classification committee. Id.  
12 § 3044(b)(4). C-status inmates do not earn work credits. Id.  
13 § 3044(b)(5)(A). The inmate remains in a zero-credit-earning status  
14 until classified for placement in a credit-qualifying work group.  
15 Id. § 3044(b)(5)(B). After being placed on C-status, the inmate can  
16 submit a written request to be removed from C-status. Id.  
17 § 3044(b)(5)(B).

18 Inmates in work groups D-1 and D-2 include those who are  
19 assigned to a Security Housing Unit (SHU). An inmate on D-1 status  
20 receives three months credit for each six months served or one day  
21 credit for two days served. Id. § 3044(b)(6). An inmate on D-2  
22 status who is deemed a program failure while on indeterminate or  
23 determinate lockup status, earns zero credit. Id. § 3044(b)(7).  
24 Inmates assigned to a determinate SHU term which includes a  
25 forfeiture of credits under California Penal Code § 2933 shall not  
26 be placed in a credit-earning assignment during the period of credit  
27 forfeiture or 180 days, whichever is less, starting from the date of  
28 change in custodial classification. Id. § 3044(b)(7)(A).

1 C. California Penal Code § 2933.6

2 Included among the documents submitted by Petitioner is an  
3 exhibit relating to the calculation of his release date. The  
4 documents show that Petitioner's misconduct comes within the  
5 provision of California Penal Code § 2933.6 for the following  
6 offenses: assault or battery causing serious bodily injury,  
7 California Penal Code § 2933.6(b)(3), and/or assault or battery on  
8 a peace officer or other non-prisoner which results in physical  
9 injury, id. § 2933.6 (b)(4).

10 1. Applicable Subsections

11 The California Legislature, pursuant to California Penal Code  
12 § 2933.6, provides that all inmates who commit certain misconduct  
13 listed in subsection(b) are ineligible to earn work credits or good  
14 behavior credits while housed in a SHU or an Administrative  
15 Security Unit (Ad Seg) for that misconduct. Cal. Penal Code  
16 § 2933.6(a).

17 This section does not apply if the administrative finding of  
18 the misconduct is overturned or if the inmate is criminally  
19 prosecuted for the misconduct and is found not guilty. Prosecution  
20 and conviction are not required; rather, an administrative finding  
21 will suffice. Id. § 2933.6(a), (c).

22 2. Key Terms from the Calculation Worksheet For  
23 California Penal Code § 2933

24 In response the Court's requests for "assistance in providing  
25 a clear and concise summary of the relevant facts and  
26 calculations," Respondent has submitted exhibits in the form of  
27 samples of Petitioner's credit calculation on a form entitled  
28 "Calculation Worksheet For PC Section 2933 (Work Incentive),"

1 showing Pelican Bay State Prison's Correctional Case Records  
2 Manager's analysis of Petitioner's EPRD from the date of his  
3 incarceration. (Resp't Ex. B, Samples of Calculation Worksheets  
4 for California Penal Code § 2933.6.)

5 A California inmate's EPRD and maximum adjusted release date  
6 (MARD) are calculated when he enters prison. The MARD generally is  
7 determined by figuring the starting date in the CDCR prison system  
8 plus the total prison term imposed minus any pre-prison credits.  
9 The MARD remains the same throughout the inmate's incarceration as  
10 long as he is not convicted of additional crimes resulting in  
11 additional sentences. From this date, the CDCR subtracts worktime  
12 credits the inmate has earned or is expected to earn in his current  
13 credit-earning status, adds back any worktime credits that have  
14 been denied or lost through disciplinary actions, and subtracts any  
15 denied or lost credits that have been restored. The result is the  
16 EPRD.

17 The EPRD is adjusted throughout the inmate's stay in prison  
18 when various events occur, e.g., when he moves from one credit-  
19 earning level to another, when he loses credits due to a  
20 disciplinary decision, and when lost credits are restored. The  
21 EPRD does not reflect the exact date that a prisoner is going to be  
22 released. The EPRD is only a predicted release date because the  
23 EPRD is based on the assumption that the circumstances which  
24 determine term length or credit earning status will not change.  
25 If, however, after the date an EPRD is computed, a prisoner's  
26 credit-earning status changes, credits are lost or restored, or a  
27 new term is received, the EPRD will change. (See Pet'r Ex. A,  
28 Prison Law Office, Release Date Calculations and Challenging Error



1 in Release Date dated March, 2001.)

2 Unlike the EPRD, an inmate's Current Release Date (CRD) does  
3 not take into consideration the probability of earning future  
4 credits. (Id.) The CRD is obtained by subtracting from the MARD  
5 the net total of credits earned in prison up to the day that  
6 credits were applied. Because the CRD takes into account only  
7 credits earned to the present and does not consider the probability  
8 of an inmate earning credits in the future, it is also not a true  
9 release date.

10 III. Factual Background

11 The factual background of each section has been taken from the  
12 petition, Respondent's answer, Petitioner's traverse and all  
13 attached exhibits. Petitioner has provided the Court with numerous  
14 documents pertaining to the administrative appeals showing that he  
15 sought to have his credits restored after his periods of SHU  
16 confinement from 1992 through 1995 and in 1996 as well as after his  
17 SHU confinement during various periods from 2001 to 2005. The  
18 facts include those addressed by the final level of review of each  
19 of his administrative appeals, i.e., the Director's Level Appeal  
20 Decision, as well as the results of his Computation Review Hearings  
21 and his state habeas petitions.

22 A. May 17, 1996 Director's Level Appeal Decision

23 A number of the exhibits submitted by Petitioner pertain to a  
24 loss of worktime credits from April 8, 1992 to October 9, 1995,  
25 when Petitioner was housed in the SHU at High Desert State Prison.<sup>4</sup>  
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27 <sup>4</sup> The record shows that Petitioner violated Title 15 of the  
28 California Code of Regulations § 3005(c) (attempted battery on a peace  
officer) and § 3005(a) (leading a disturbance and/or behavior which

1 (Pet'r Ex. F, Director's Level Decision, log no. 95-5507, dated May  
2 17, 1996; Resp't Ex. B, Samples of Calculation Worksheets for  
3 California Penal Code § 2933.6.) Before Petitioner entered the SHU  
4 on April 8, 1992, his EPRD was projected at 2002. After his  
5 release from the SHU on October 9, 1995, his EPRD was recalculated  
6 and projected at 2004.

7 On December 10, 1995, Petitioner filed a CDCR 602 Inmate/  
8 Parolee Appeals Form (602 appeal),<sup>5</sup> alleging the miscalculation of  
9 his 2004 EPRD. He pursued the appeal through the various levels of  
10 administrative review.<sup>6</sup>

11 On February 2, 1996, the CDCR provided Petitioner with a  
12 Second Level Appeal Response to his 602 appeal. Petitioner's  
13 appeal was denied on the ground that he was assessed D-2 status at  
14 zero-earning-credit and "the credit earned from 4/8/92 to 10/9/95  
15 was only 118 days versus approximately 915 days had [Petitioner]  
16 not entered into the SHU at D2 status." (Pet'r Ex. F, Second Level  
17 Appeal Response, log no. 95-5507, dated Feb. 21, 1996.) Petitioner  
18 appealed this decision to the Director's level.

19 On May 17, 1996, Petitioner's appeal was denied at the  
20 \_\_\_\_\_

21 could lead to violence) in 1993, and he also violated Title 15 of the  
22 California Code of Regulations § 3014 (delaying lockup) and § 3005(c)  
23 (threat to assault staff) in 1994. (Pet'r Ex. F, Director's Level  
24 Decision, log no. 95-5507, dated May 17, 1996.)

25 <sup>5</sup> A 602 appeal form is used by inmates and parolees to protest  
26 the conduct and/or decisions of correctional employees or officials.

27 <sup>6</sup> California prison regulations provide administrative procedures  
28 in the form of one informal and three formal levels of review to  
address a prisoner's claim. See Cal. Code Regs. tit. 15,  
§§ 3084.1-3084.7. Administrative procedures generally are exhausted  
once the prisoner has received a Director's Level Appeal Decision,  
which is the decision at the third and final level of review. Cal.  
Code Regs. tit. 15, § 3084.5.

1 Director's level (Pet'r Ex. F, Director's Level Appeal Decision,  
2 log no. 95-5507, dated May 17, 1996.) The issue addressed was  
3 whether Petitioner's 2004 EPRD was "incorrectly calculated" because  
4 he claimed "the credit losses [were] too high." (Id.) The  
5 decision, which was consistent with the Second Level Appeal  
6 Response to Petitioner's 602 appeal, stated:

7 The institution takes the position that appellant stated  
8 to the records manager that he did not understand why his  
9 release date prior to his entering Secure Housing Unit  
10 (SHU) was in 2002 and it is now in 2004. It was  
11 explained to the appellant that his SHU term was  
12 approximately four years with D-2 or zero earning status.  
13 The pre-SHU calculation took into consideration the  
14 projected earnings that appellant could have made prior  
15 to his entering the SHU. Because of the long D-2/zero  
16 earning status, appellant earned only 118 days from April  
17 8, 1992 to October 9, 1995, rather than the approximately  
18 915 days he could have earned had he not been placed into  
19 the SHU. Appellant lost approximately 797 days off of  
20 his pre-SHU EPRD calculation, resulting in a release year  
21 of 2004. Appellant's current EPRD, on 1/3 earning  
22 status, is April 19, 2004. This date will change once  
23 the appellant is assigned to a job. Credits lost based  
24 upon SHU term cannot be restored.

25 (Id.) Appeals Examiner C. Dahlberg denied the appeal concluding:

26 The documentation and arguments presented are persuasive  
27 that appellant's four year SHU term has affected his  
28 release date, as calculated by records staff, by  
approximately 797 days. The time not credited due to  
appellant's placement in SHU cannot be restored pursuant  
to PC 2933.6. When appellant receives an assignment,  
his EPRD will be recalculated; that release date will be  
correct so long as appellant remains in Work Group A-1  
and is not sentenced to another SHU term.

29 (Id.)

30 B. February 21, 1997 Director's Level Appeal Decision

31 In 1996, Petitioner was housed in the SHU for committing a

1 CDC-115 rule violation.<sup>7</sup> He filed a 602 appeal alleging  
2 miscalculation of his goodtime/worktime credits after his 1996 SHU  
3 confinement.

4 On November 22, 1996, CDCR officials provided Petitioner with  
5 a Second Level Appeal Response to his allegation of miscalculation,  
6 which referred to Petitioner's requests for an Olsen Review, which  
7 is an administrative procedure to review his central file, and for  
8 a computation review hearing in accordance with Haygood v. Younger,  
9 769 F.2d 1350, 1354-58 (9th Cir. 1985). (Pet'r Ex. F, Second Level  
10 Appeal Response, log no. 96-07054, dated November 22, 1996.)

11 According to the response, Petitioner's request for an Olsen Review  
12 was granted on September 13, 1996. (Id.) Petitioner was therefore  
13 provided an opportunity to review his central file with  
14 Correctional Counselor S. Cook. However, Petitioner's request for  
15 a Haygood hearing was denied because he failed to "specifically  
16 cite the area where [his] time computation [was] in error." (Id.)  
17 His appeal was denied at the second level because he "failed to  
18 provide any evidence of miscalculation of [his] time." (Id.)

19 On February 21, 1997, Petitioner was provided with a  
20 Director's Level Appeal Decision. (Pet'r Ex. F, Director's Level  
21 Appeal Decision, log no. 96-07054, dated Feb. 21, 1997.) The issue  
22 addressed was whether to grant Petitioner's request to recalculate  
23 his EPRD and/or his request for a Haygood hearing. (Id.)  
24 Petitioner was granted a Haygood hearing based on findings that:  
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26 <sup>7</sup> A CDC-115 Rule Violation Report is the form used by the CDCR  
27 to record a prisoner's rule violation, to serve notice of the  
28 violation upon the prisoner, and to record the findings of any  
subsequent disciplinary hearing. However, the record does not contain  
the report pertaining to Petitioner's 1996 CDC-115 rule violation.

1 Inmate/parolees who are subject to the jurisdiction of  
2 the Department of Corrections have a right to a  
3 Computation Review Hearing when they believe there is an  
4 error in the computation of a term of confinement or  
period of parole based upon documentation in the record  
and that such error or calculation adversely affects  
their term of confinement or period of parole.

5 (Id.)

6 Petitioner's file was audited on April 9, 1997. (Pet'r Ex. I,  
7 Memorandum from Associate Warden V. W. Woods dated Dec. 18, 1997.)

8 On July 29, 1997, Petitioner appeared before the Institutional  
9 Classification Committee (ICC).<sup>8</sup> The ICC nullified several of his  
10 SHU terms and restored a total of 180 days. The ICC memorandum  
11 stated:

12 Inmate Phillips appeared before B-FAC ICC this date for a  
13 WG Review Clarification. Committee notes S [Petitioner]  
14 received CDC 115 dated 1/22/93, which was a Div. A1  
offense for Assault on Staff. Zero Credit loss was  
assessed due to time constraints not being met.

15 Committee Action: Per AB 93-7 page 11, Section 10 and  
16 page 13 Section 18, committee elects to Administratively  
17 grant D1 WG from 1/22/93 to 10/22/93. CDC 115, for  
threatening staff was dismissed per 2nd level appeal log  
18 #96-07361. Inmate was placed in AD/SEG on 5/26/94  
pending adjudication of this RVR. Committee elects to  
administratively grant A2 WG from 5/26/94 to 8/11/94. S  
19 was placed in AD/SEG on 6/19/96 and released to GP on  
20 6/20/1996. The CDC referenced in this placement is dated  
6/19/96 for Threatening Staff, which was dismissed.  
21 Inmate was A1-A at the time of AD SEG placement,  
therefore committee elects to administratively grant 'S'

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22  
23 <sup>8</sup> The ICC establishes a prisoner in an institution by making sure  
24 he understands what is expected of him, what programs are available,  
25 assigning a custody designation and placing the prisoner in a  
work/privilege group. Cal. Code Regs. tit. 15, § 3376(d). The Unit  
26 Classification Committee (UCC) reviews a prisoner's situation annually  
and makes adjustments where necessary. Cal. Code Regs. tit. 15,  
27 § 3376(d)(2). The Institution and Facility Classification Committee  
(IFCC) is more specialized, accepting referrals from other committees,  
28 reviewing prisoners' requests and changing a prisoner's work/privilege  
group if there are circumstances warranting such change. Cal. Code  
Regs. tit. 15, § 3376(d)(3).

1 time from 6/19/96 through 6/20/96. Committee notes that  
2 when 'S' was released from AD/SEG on 6/20/96, inmate was  
3 made A2-B when the WG should have been restored back to  
4 A1. Inmate remained at D2 until reassigned on 7/12/96,  
5 therefore, committee elects to restore WG A1 effective  
6 6/21/96 to 7/11/96.

7 (Pet'r Ex. H, CDC 128-G dated July 29, 1997.)

8 Petitioner's central file was audited again on December 8,  
9 1997, and his EPRD was adjusted to May 11, 2002. (Pet'r Ex. I,  
10 Memorandum from Associate Warden V. W. Woods dated Dec. 18, 1997.)

11 C. January 13, 1998 Computation Review Hearing

12 On January 13, 1998, Petitioner's Computation Review Hearing  
13 took place, and his revised EPRD of May 11, 2002 was found to be  
14 correct based on credits applied through November 25, 1997. (Pet'r  
15 Ex. I, Computation Review Hearing dated January 13, 1998.)

16 D. State Habeas Corpus Petitions

17 Petitioner then pursued state habeas corpus relief. A review  
18 of his state habeas petitions shows allegations almost identical to  
19 those in the present petition, including assertions that over a  
20 period of almost twelve years Petitioner had worked for twenty-  
21 eight months but did not receive adequate credits for that period,  
22 that his periods of SHU confinement from 1992 through 1995 and in  
23 1996 resulted in erroneous credit loss, and that over time he has  
24 lost more than 1,500 credits which should have been restored. On  
25 March 5, 2003, the California Court of Appeal denied his petition  
26 summarily without citation, and on January 22, 2004, the California  
27 Supreme Court denied his petition summarily, citing In re Swain, 34  
28

1 Cal. 2d 300, 304 (1949), and In re Clark, 5 Cal. 4th 750 (1993).<sup>9</sup>  
 2 Phillips [Regonald D.] on H.C., No. S115313, (Cal. Jan. 22, 2004).

3 E. March 15, 2002 Commutation Review Hearing and June 27,  
 4 2002 Director's Level Appeal Decision

5 In a letter dated June 1, 2001, the CDCR responded to  
 6 Petitioner's allegation that he is "being retained past [his]  
 7 EPRD," and other alleged "discrepancies and errors of calculation"  
 8 for 1997 to 2001. (Pet'r, Ex. I, Letter from Correctional  
 9 Administrator Mark Shepherd dated June 1, 2001.) The letter  
 10 appears to correspond to Petitioner's allegations that he did not  
 11 receive accurate credits for the periods of SHU confinement from  
 12 1992 through 1995, in 1996 and in 2001. Petitioner's EPRD was

13 <sup>9</sup> Under California law, a denial of a habeas petition with a  
 14 citation to In re Swain indicates that a petitioner has failed to  
 15 state his claim with sufficient particularity for the state court to  
 16 examine the merits of the claim and has failed to explain the reasons  
 17 for any delay in filing his petition. See In re Swain, 34 Cal. 2d at  
 18 304. The Ninth Circuit treats a citation to In re Swain as standing  
 19 for a denial on procedural grounds which can be cured in a renewed  
 state petition. See Kim v. Villalobos, 799 F.2d 1317, 1319 (9th Cir.  
 1986). However, the state court's citation to In re Swain may not  
 establish that a petitioner has failed to exhaust if the petitioner  
 can show that the claims cannot be alleged with any greater  
 particularity, see id. at 1319-20, as is the case here.

20 It is not clear whether a citation to In re Clark indicates here  
 21 that the California Supreme Court denied Petitioner's claim on the  
 22 merits, as untimely, or for substantial delay without good cause. In  
 23 Ranieri v. Terhune, 366 F. Supp. 2d 934 (C.D. Cal. 2005), the  
 24 California state court found that a citation to In re Clark  
 25 constituted an adequate state procedural bar when the petitioner  
 26 raised his claims in a state habeas petition two years and nine months  
 27 after sentencing. If the petitioner cannot justify the delay, then  
 28 a court may reach the merits only if the petitioner asserts facts  
 demonstrating that a "fundamental miscarriage of justice occurred as  
 a result of the proceedings leading to conviction and/or sentence."  
In re Clark, 5 Cal. 4th at 797. Here, Respondent's allegation that  
 the petition is untimely has already been addressed in the Court's  
 Order Denying Motion to Dismiss dated August 24, 2005 (docket no. 11).  
 Because the Court determined that the petition is not time-barred,  
 Petitioner's claims will not be dismissed based on the state court's  
 citation to In re Clark.



1 recalculated and assessed at September 3, 2006. (Id.)

2 On January 3, 2002 Petitioner sought relief through  
3 administrative channels by filing another 602 appeal. In an  
4 informal level decision dated February 4, 2002, the reviewing  
5 officer noted that Petitioner "recently had 316 days restored," and  
6 that certain disciplinary charges had been dismissed. The First  
7 Formal Level of Review was waived. (Pet'r Ex. K, Second Level  
8 Appeal Response, log no. 02-00396, dated Mar. 20, 2002.)

9 On March 15, 2002, Petitioner received a Computation Review  
10 Hearing conducted by D. Sackett, Case Records Manager. (Pet'r Ex.  
11 K, Director's Level Appeal Decision, log no. 02-00396, dated June  
12 27, 2002.) During that hearing, it was "determined that his  
13 calculation was computed correctly and there was no error in his  
14 calculated EPRD." (Id.)

15 On March 20, 2002, Petitioner received a Second Level Appeal  
16 Response to the claim that he did not receive accurate credits.  
17 (Pet'r Ex. K, Second Level Appeal Response, log no. D-02-00396,  
18 dated March 20, 2002.) According to the response, Petitioner had  
19 received 1,627 days credit losses, a total of 586 days of credit  
20 restorations, and was assessed a D-2, zero earning status. It  
21 appears from the record that Petitioner was assigned to SHU in 2001  
22 for violating California Code of Regulation § 3005(c) (attempted  
23 battery on a peace officer). (Pet'r Ex. K, Classification Credit  
24 Restoration dated October 11, 2001.) As a result, Petitioner was  
25 assessed at D-2 zero earning status and scheduled to complete his  
26 SHU/D-2 status on December 24, 2002. (Id.) This SHU confinement  
27 established a projected release date of December 2, 2005. (Pet'r  
28 Ex. K, Second Level Appeal Decision, log no. 02-00396, dated Mar.



1 20, 2002.)

2 On June 27, 2002, the Director's Level Appeal Decision  
3 addressed Petitioner's claim that his EPRD date had been  
4 miscalculated. The Chief Inmate Appeals Officer noted that the  
5 Case Records Manager reviewed all the documentation from  
6 Petitioner's central file and determined that the calculation of  
7 his EPRD was computed correctly. (Id.) The reviewing officer  
8 denied the appeal based on findings that:

9 [T]he appellant had the opportunity to present further  
10 documentation and verbal presentation at the Hearing.  
11 The appellant was provided with copies of the appellant's  
12 time calculation upon which the EPRD is based. The final  
13 determination at the Hearing was the appellant's time  
14 calculation was correct and did not require the changes  
he is seeking. Based upon the documentation, it is  
determined that the institution's actions in this matter  
were proper and in compliance with California Code of  
Regulations Title 15, Section (CCR) 3084.7(h).

15 (Id.) Petitioner was informed that his release date calculation  
16 was correct, and that the administrative remedies available to him  
17 within the CDCR had been exhausted. (Id.)

18 F. October 4, 2005 Computation Review Hearing and October  
19 13, 2005 Second Level Appeal Decision<sup>10</sup>

20 On January 18, 2005, Petitioner requested a Computation  
21 Hearing to be conducted by the Chief of Classification Services in  
22 Sacramento. (Pet'r Ex. L, Inmate/Parolee Appeal Form dated January  
23 18, 2005.) On February 9, 2005, Petitioner's appeal was screened  
24 out. (Pet'r Ex. L, Inmate/Parolee Disciplinary Appeals Screening  
25 Form dated February 9, 2005.) The reviewing officer, D. W.

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26  
27 <sup>10</sup> There is nothing in the record that indicates whether  
28 Petitioner appealed to the Director's level, and neither party has  
informed the Court if there exists a Director's Level Appeal Decision  
for Petitioner's 602 appeal, log no. 05-02301.

1 Bradbury, stated:

2 Your date was most recently updated 11/24/04, and you were  
3 notified via Legal Summary Sheet. The other issues you  
4 raise regarding credits from your initial incarceration  
was reviewed in your prior Computation Review. You've not  
provided a credible explanation for exceeding time limits.

5 (Id.)

6 On March 15, 2005, Petitioner filed a new 602 appeal  
7 requesting a "prompt Haygood Hearing" to address "continuous,  
8 intentional, miscalculation and miscomputation of his sentence."  
9 (Pet'r Ex. L, 602 appeal, log no. 05-02301, dated March 15, 2005.)  
10 It appears from the record that Petitioner's 602 appeal relates to  
11 two separate CDC-115 disciplinary violations on May 5, 2004 and May  
12 25, 2004 for staff assaults. Petitioner was confined in the SHU at  
13 D-2 status for purposes of worktime credits. (Id.) Additional  
14 rule violations caused credit losses of thirty days each on August  
15 4, 2004, January 27, 2005, and July 27, 2005. As a result of these  
16 violations, Petitioner suffered a total credit loss of 1,927 days.  
17 (Id.) His EPRD was calculated at August 12, 2007. (Id.)

18 On March 22, 2005, an informal review was conducted. Case  
19 Record Administrator, C. Hodge wrote:

20 After a thorough review of your file, I have found that  
21 your sentence by the court and the calculations to be  
22 correct. You received a Haygood Hearing on March 1,  
2002.

23 . . . It is unclear to us what you think is incorrect  
24 about your term. You have included so much additional  
25 verbiage that it is difficult to decipher what you are  
26 appealing. If you will submit a simple question stating  
27 what you believe has been incorrectly calculated we will  
28 be a happy to answer it.

Look at the attached copy of your calculation. Look at  
the print-out of your losses and restorations. You will  
see that CDC has appropriately applied the information we

1 received on 128-g chronos<sup>11</sup> and CDC-115s. There has been  
2 no attempt to apply losses that have not been earned. If  
3 you need to see your file to check these losses or  
chronos, please contact your counselor and ask to review  
your file.

4 (Pet'r Ex. L, Informal Review by C. Hodge dated Mar. 22, 2005.)

5 On October 4, 2005, Petitioner appealed to the CDCR for a  
6 computation of his EPRD. (Pet'r Ex. M, Computation Review Hearing  
7 Decision, log no. 05-02301, dated Oct. 4, 2005.) Finding no  
8 evidence to support the allegation that his release date had been  
9 miscalculated, the reviewing officer denied the appeal and issued  
10 his Computation Review Hearing Decision, which is equivalent to the  
11 decision at the first level of review. (Id.) Petitioner's CRD was  
12 set at September 28, 2007. (Id.)

13 On October 13, 2005, Petitioner received a Second Level Appeal  
14 Response to his appeal. The warden of Pelican Bay State Prison  
15 stated:

16 The inmate believes his EPRD has been calculated  
17 incorrectly because he has never been given any of the  
18 credit he is due, from being given more time than the  
19 court ordered and not giving him all of the pre-sentence  
20 credit ordered by the court to deliberately and  
21 maliciously miscalculating his time to a point where he  
has already served five and one-half years more than that  
which was sentenced by the court. He wants an immediate  
release and an end to this absurd, blatant malign, and  
intentional miscarriage of justice.

22 (Pet'r Ex. M, Second Level Appeal Response, log no. 05-02301, dated  
23 Oct. 13, 2005.) According to the response, Petitioner's  
24 Computation Review Hearing on March 15, 2002 was not appealed.  
25

---

26  
27 <sup>11</sup> "Chronos" in this context appears to refer to "Chronological  
28 History," which is a document "prepared for each inmate, upon which  
significant dates and commitment information affecting the inmate are  
logged." Cal. Code Regs. tit. 15, § 3000.

1 (Id.) Because this prior decision was not appealed to the next  
2 level, the review began with the last credit calculation, at which  
3 time, Petitioner's EPRD was assessed at December 2, 2005. (Id.)  
4 Petitioner stated that he did not want to continue the interview if  
5 they were "not going to go all the way back to the beginning of his  
6 term." (Id.) Finding no evidence to support Petitioner's  
7 allegations that his release date had been miscalculated or that he  
8 was five and one-half years overdue for release, the appeal was  
9 denied. (Id.) The CRD was reviewed and verified as September 28,  
10 2007. (Id.)

11 The record shows that Petitioner's EPRD is currently set at  
12 August 12, 2007.<sup>12</sup> (Resp't Ex. B, Sample no. 55, Calculation  
13 Worksheet for California Penal Code § 2933.6, dated Nov. 23. 2005.)

#### 14 DISCUSSION

##### 15 I. Exhaustion

16 It is well settled that "federal habeas relief is not  
17 available unless the [petitioner] has exhausted the remedies  
18 available in the courts of the State." 28 U.S.C.  
19 § 2254(b)(1)(A)). Prisoners in state custody who wish to challenge  
20 collaterally in federal habeas proceedings either the fact or  
21 length of their confinement are required first to exhaust state  
22 judicial remedies, either on direct appeal or through collateral  
23 proceedings, by presenting the highest state court available with a  
24 fair opportunity to rule on the merits of each and every claim they  
25 seek to raise in federal court. See 28 U.S.C. § 2254(b), (c);

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27  
28 <sup>12</sup> The parties have not submitted any further exhibits that  
reflect that Petitioner's EPRD has changed.

1 Granberry v. Greer, 481 U.S. 129, 133-34 (1987). The exhaustion  
2 requirement is not jurisdictional, but rather a matter of comity to  
3 the state court and gives the state court the initial opportunity  
4 to correct the state's alleged constitutional deprivations. See  
5 id.; Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy,  
6 455 U.S. 509, 518 (1982). A federal court will find that the  
7 highest state court was given a full and fair opportunity to hear a  
8 claim if the petitioner has presented the highest state court with  
9 the claim's factual and legal basis. Duncan v. Henry, 513 U.S.  
10 364, 365 (1995) (legal basis); Keeney v. Tamayo-Reyes, 504 U.S. 1  
11 (1992) (factual basis).

12 The Court finds that Petitioner properly exhausted his due  
13 process claim based on his allegations that he did not receive  
14 accurate credits during his periods of SHU confinement from 1992  
15 through 1995 and in 1996. See Duncan, 513 U.S. at 365. However  
16 the record does not show that Petitioner presented the highest  
17 state court with the factual and legal basis for his due process  
18 claim based on his allegations that he did not receive accurate  
19 credits for his SHU confinement during various periods from 2001 to  
20 2005.

21  
22 Because the petition contains additional factual allegations  
23 not raised in the state court, it is arguably unexhausted. The  
24 Court, however, will consider the time credit calculations  
25 resulting from the new violations. The new factual allegations are  
26 not wholly different from Petitioner's original allegations that  
27 the CDCR incorrectly calculated his EPRD from the date of his  
28 incarceration. Even if the claim were unexhausted due to the new

1 factual allegations, the Court will not dismiss the petition  
2 without prejudice pending exhaustion of the claim. The Court may  
3 deny a petition on the merits even if it is unexhausted. See 28  
4 U.S.C. § 2254(b)(2). Therefore, judicial efficiency and the  
5 administration of justice will be best served by the Court  
6 addressing the merits of Petitioner's due process claim that he did  
7 not receive accurate credits for his SHU confinement during various  
8 periods from 2001 to 2005.

9 II. Legal Standard

10 Under the Antiterrorism and Effective Death Penalty Act  
11 (AEDPA), a federal writ of habeas corpus may not be granted with  
12 respect to any claim that was adjudicated on the merits in state  
13 court unless the state court's adjudication of the claims:

14 "(1) resulted in a decision that was contrary to, or involved an  
15 unreasonable application of, clearly established Federal law, as  
16 determined by the Supreme Court of the United States; or

17 (2) resulted in a decision that was based on an unreasonable  
18 determination of the facts in light of the evidence presented in  
19 the State court proceeding." 28 U.S.C. § 2254(d).

20 "Under the 'contrary to' clause, a federal habeas court may  
21 grant the writ if the state court arrives at a conclusion opposite  
22 to that reached by [the Supreme] Court on a question of law or if  
23 the state court decides a case differently than [the Supreme] Court  
24 has on a set of materially indistinguishable facts." William v.  
25 Taylor, 529 U.S. 362, 412-13 (2000). "Under the 'unreasonable  
26 application' clause, a federal habeas court may grant the writ if  
27 the state court identifies the correct governing legal principle  
28

1 from the [the Supreme] Court's decision but unreasonably applies  
2 that principle to the facts of the prisoner's case." Id. at 413.  
3 The only definitive source of clearly established federal law under  
4 28 U.S.C. § 2254(d) is in the holdings of the Supreme Court as of  
5 the time of the relevant state court decision. Id. at 412.

6 In determining whether the state court's decision is contrary  
7 to, or involved an unreasonable application of, clearly established  
8 federal law, a federal court looks to the decision of the highest  
9 state court to address the merits of a petitioner's claim in a  
10 reasoned decision. Lajoie v. Thompson, 217 F.3d 663, 669 n.7 (9th  
11 Cir. 2000). It also looks to any lower court decision examined or  
12 adopted by the highest state court to address the merits. See  
13 Williams v. Rhoades, 354 F.3d 1101, 1106 (9th Cir. 2004) (because  
14 state appellate court examined and adopted some of the trial  
15 court's reasoning, the trial court's ruling is also relevant).

16 Where the state court gives no reasoned explanation of its  
17 decision on a petitioner's federal claim and there is no reasoned  
18 lower court decision on the claim, a review of the record is the  
19 only means of deciding whether the state court's decision was  
20 objectively reasonable. See Himes v. Thompson, 336 F.3d 848, 853  
21 (9th Cir. 2003); Greene v. Lambert, 288 F.3d 1081, 1088 (9th Cir.  
22 2002). When confronted with such a decision, a federal court  
23 should conduct "an independent review of the record" to determine  
24 whether the state court's decision was an unreasonable application  
25 of clearly established federal law. Himes, 336 F.3d at 853; accord  
26 Lambert v. Blodgett, 393 F.3d 943, 970 n.16 (9th Cir. 2004).  
27  
28

## 1 III. Due Process Claim

## 2 A. Applicable Legal Standard

3 In order to state a due process claim, a petition must show  
4 that a constitutionally protected liberty interest is implicated.  
5 Baumann v. Arizona Dep't of Corrections, 754 F.2d 841, 844 (9th  
6 Cir. 1985). If a state prisoner's time credits have been  
7 improperly computed, he may have a claim for denial of due process.  
8 See Haygood v. Younger, 769 F.2d 1350 (9th Cir. 1985) (en banc),  
9 cert. denied, 478 U.S. 1020 (1986). Any deprivation of time  
10 credits allegedly impacting a prisoner's sentence generally may be  
11 remedied only by way of habeas corpus. See Young v. Kenny, 907  
12 F.2d 874, 876-78 (9th Cir. 1989), cert. denied, 498 U.S. 1126  
13 (1991); Toussaint, 801 F.2d at 1096 n.14. Prisoners retain their  
14 right to due process subject to the restrictions imposed by the  
15 nature of the penal system. See Wolff v. McDonnell, 418 U.S. 539,  
16 556 (1974). The Due Process Clause requires certain minimum  
17 procedural protections if (1) state statutes or regulations  
18 narrowly restrict the power of prison officials to impose the  
19 deprivation, and (2) the liberty in question is one of "real  
20 substance." See Sandin v. Conner, 515 U.S. 472, 477-87 (1995);  
21 Wolff, 418 U.S. at 556-572.

23 A state may create a constitutionally protected liberty  
24 interest if it establishes regulatory measures that impose  
25 substantive limitations on the exercise of official discretion.  
26 Hewitt v. Helms, 459 U.S. 460, 470-71 (1983). "[A] State creates a  
27 protected liberty interest by placing substantive limitations on  
28



1 official discretion." Olim v. Wakinekona, 461 U.S. 238, 249  
2 (1983). In Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454  
3 (1989), for example, the Court noted that a state most commonly  
4 fetters official discretion by a two-step process. First, the  
5 state establishes "substantive predicates" to govern official  
6 decisionmaking. These are "particularized standards or criteria to  
7 guide the [s]tate's decisionmakers " Id. at 461. Next, the state  
8 requires, "in explicitly mandatory language," that if the  
9 substantive predicates are met, a particular outcome must follow.  
10 See id. at 461-64. Procedural guidelines alone are not sufficient  
11 to create a protected interest. See Smith v. Noonan, 992 F.2d 987,  
12 989 (9th Cir. 1993) (provision that merely raises procedural  
13 requirements without substantive predicates, even if mandatory, not  
14 enough). Only where they are combined with "substantive  
15 predicates" will an interest entitled to protection by the Due  
16 Process Clause be found. Hewitt, 459 U.S. at 472-33.

17  
18 B. Analysis

19 1. Miscalculation of EPRD Claim

20 When Petitioner filed the present petition, he argued that he  
21 did not understand why he was still being held after serving  
22 "thirteen years and five months on a seventeen years and eight  
23 month sentence" because he should have earned worktime/goodtime  
24 credits pursuant to California Penal Code § 2933. (Pet. at 2.) It  
25 is evident that Petitioner does not understand the correct manner  
26 to calculate his EPRD. Therefore, his due process claim based on  
27 the allegations that prison officials have miscalculated his EPRD  
28 fails as outlined below.

1 a. EPRD After SHU Confinement from 1992 through  
2 1995

3 (1) Background

4 Petitioner contends that calculation of his goodtime/worktime  
5 credits after his SHU confinement from 1992 through 1995 was  
6 improper because it resulted in an EPRD that causes him to be held  
7 beyond the termination of his sentence. (Pet. at 8.) In support  
8 of the petition, he cites Title 15 of the California Code of  
9 Regulations § 3044(a), (b) for the proposition that he earned  
10 day-for-day worktime credits under California Penal Code § 2933 and  
11 should be awarded two days credit for each day of qualifying  
12 performance. (Id.)

13 (2) Analysis

14 Instead of specifying miscalculations relating to his EPRD  
15 after his SHU confinement from 1992 through 1995, Petitioner offers  
16 a calculation entitled, "Simplified Version of Time Computation,"  
17 which concludes that "10 years and 2 months" is the time that he  
18 "would have had to serve in C.D.C.R." (Traverse at 13-14.) He  
19 argues that, as of January 5, 2006, the date he signed his  
20 traverse, he had served fourteen years and five months; therefore,  
21 he "should have been released many years ago." (Id.) However,  
22 Petitioner's attempt to distort the CDCR's method of calculating  
23 his EPRD is unavailing. His method of computation fails to take  
24 into consideration the general proposition that disciplinary credit  
25 losses (e.g., credits lost after his SHU confinement from 1992  
26 through 1995) can be applied against future credit that will be  
27 earned as well as credit that has already been earned. See Cal.  
28

1 Penal Code §§ 2932, 2933.

2 Unlike Petitioner's "simplified version," the CDCR Calculation  
3 Worksheets use a fourteen-step formula to calculate the new EPRD  
4 pursuant to California Penal Code § 2933.6. The CDCR's formula  
5 takes into account the credits earned, lost and restored, by  
6 putting them into the equation before projecting the credits the  
7 inmate might receive in the future if he remains at his current  
8 credit-earning level. (See Resp't Ex. B, Calculation Worksheets  
9 ¶¶ 6-11; Pet'r Ex. A, Prison Law Office, Release Date Calculations  
10 and Challenging Errors in Release Date dated March, 2001.) When a  
11 particular number of time credits is forfeited, the EPRD does not  
12 increase day-for-day by the same number. Similarly, when a  
13 particular number of time credits is restored, the EPRD does not  
14 decrease day-for-day by the same number. (Id.) This is because  
15 the days of credits are put in the formula before the projection  
16 for future credit-earning is made. That is, the CDCR subtracts the  
17 net number of credits earned from the MARD to reach a CRD and the  
18 EPRD by projecting how many days of credit will be earned in the  
19 future if the inmate's status does not change. (See id. ¶¶ 12-14.)  
20 In other words, from the MARD date, the CDCR subtracts worktime  
21 credits the inmate has earned or is expected to earn in his current  
22 credit-earning status, adds back any worktime credits that have  
23 been denied or lost through disciplinary actions, and subtracts any  
24 denied or lost credits that have been restored.

25  
26 Here, the Court finds that Petitioner fails to show that he  
27 did not receive accurate credits during his SHU confinement from  
28 1992 through 1995. Based on a careful examination of the record,

1 the Court has gleaned the reason for the change in Petitioner's  
2 EPRD from 2002 to 2004 after his SHU confinement from 1992 through  
3 1995. Petitioner's Legal Status Summary (LSS)<sup>13</sup> form for September  
4 16, 1992 indicates that his EPRD was set at January 24, 2002 based  
5 on credits applied through September, 1992. (Pet'r Ex. D.) The  
6 Calculation Worksheets also show that Petitioner suffered a  
7 projected credit lost of 259 days between May 31, 1992 and May 31,  
8 1994 due to changes in his classification status from work group A-  
9 1 to D-2. (Resp't Ex. B.) Additionally, the Chronological History  
10 worksheets submitted by Petitioner further illustrate that by  
11 February 10, 1995, he was classified as a D-2 status inmate with an  
12 EPRD of 2004. (Pet'r Ex. C, Chronological History: 1992 to 2004.)  
13 Petitioner's exhibits, specifically the relevant LSS forms, do not  
14 show that his EPRD of 2004 was incorrect.

15  
16 Petitioner was also provided with a hearing at which he was  
17 afforded an opportunity to prove his allegations regarding the  
18 CDCR's improper computation of his credits after his SHU  
19 confinement from 1992 through 1995. A review of the record  
20 indicates that Petitioner had no evidence to support his  
21

---

22 <sup>13</sup> When a prisoner arrives in the CDCR system, a CDCR case records  
23 specialist reviews his abstract of judgment as well as other  
24 sentencing documents and enters the information into the CDCR computer  
25 system. A computer print-out called the "Legal Status Summary" is  
26 generated. In the present case, Petitioner's LSS form had a  
27 computer-generated message on it that his sentence was "discrepant."  
28 Discrepant cases are those cases in which errors in sentencing are  
detected from the data entered into the OBIS (prison database) or some  
needed information is missing or unclear. (Pet'r Ex. A, Prison Law  
Office, Release Date Calculations and Challenging Errors in Release  
Date dated March, 2001.) Petitioner's LSS forms also include a  
handwritten notation stating that the discrepancy means that his LSS  
forms contained errors in his sentencing.

1 allegations or to counter the evidence that his projected EPRD of  
2 2004 was based on the 118 days of credits earned, rather than the  
3 approximately 915 days he would have earned had he not entered the  
4 SHU at D-2 status from 1992 through 1995. Rather, he merely  
5 reiterated his position that the CDCR had "erroneously  
6 miscalculated" his credits.

7       Petitioner's argument that his EPRD was miscalculated  
8 ultimately fails because his credit calculation process did not  
9 include the recalculation of his EPRD subsequent to the rules  
10 violations, re-classification of his work group status and imposed  
11 SHU terms from 1992 through 1995. Cal. Penal Code § 2932(e); Cal.  
12 Code Regs. tit. 15, § 3043(c)(5)(B). California Penal Code  
13 § 2932 provides that credit "may be denied or lost." (Id.) This  
14 language clearly indicates the CDCR's discretion to refuse to  
15 consider credits that have not yet been earned. (Id.) Because  
16 Petitioner's rule violations fell within the provision of  
17 California Penal Code § 2933.6, he was barred from earning credits  
18 during his time in the SHU.  
19

20       Upon examining the calculation of the time credits after  
21 Petitioner's SHU confinement from 1992 through 1995, the Court  
22 DENIES Petitioner's claim for relief, based on the facts explained  
23 in the Director's Level Appeal Decision dated May 17, 1996, which  
24 concluded that his EPRD was April 10, 2004.

25       Given the absence of any support for his allegations, it  
26 cannot be said that the denial of Petitioner's claim "resulted in a  
27 decision that was based on an unreasonable determination of the  
28 facts in light of the evidence presented in the State court

1 proceedings." 28 U.S.C. § 2254(e)(2). Moreover, the state court's  
2 summary rejection of this claim was not contrary to, or an  
3 unreasonable application of, clearly established Supreme Court  
4 precedent, nor was it based on an unreasonable determination of the  
5 facts in light of the evidence presented. 28 U.S.C.  
6 § 2254(d)(1)(2).

7 Accordingly, Petitioner is not entitled to the writ on his due  
8 process claim based on a miscalculation of his EPRD after his SHU  
9 confinement from 1992 through 1995.

10 b. EPRD After SHU Confinement in 1996

11 (1) Background

12 Petitioner next claims that his due process rights were  
13 violated when the CDCR miscalculated his EPRD after his SHU  
14 confinement in 1996. Petitioner submits documentation from High  
15 Desert Prison to support his allegations. (Pet'r Ex. G.)

16 A review of Petitioner's exhibits indicates that he used the  
17 prison appeal process to challenge the recalculation of his EPRD  
18 after his SHU confinement in 1996. Petitioner alleged that his  
19 EPRD calculation was improperly computed because prison officials  
20 neglected to take into account certain good time credits allegedly  
21 forfeited, in violation of his constitutional rights. (Pet'r Ex.  
22 G, Memorandum, appeal log no. HDSP-A-96-05581, dated September 15,  
23 1996.)

24 In the February 21, 1997 Director's Level Appeal Decision, the  
25 reviewing officer granted Petitioner a Computation Review Hearing.  
26 (Pet'r Ex. G, Director's Level Appeal Decision, log no. 96-07054,  
27 dated Feb. 21, 1997.) On July 29, 1997, Petitioner appeared before  
28

1 the ICC for review of his placement in SHU and credit restoration  
2 pursuant to the Director's Level Appeal Decision. On December 23,  
3 1997, a second committee hearing was held. The ICC memorandum  
4 stated:

5 Phillips appeared before C-FAC UCC for Program Review.  
6 Case factors were reviewed this date during personal Unit  
7 Classification Committee for consideration of restoration  
8 of forfeited credits. Upon review this Committee acts to  
restore a total of 90 days credit for CDC-115, Log #FD-  
97-03-0064 dated 3/17/97.

9 (Id. CDC-128G dated December 23, 1997.)<sup>14</sup> Petitioner was successful  
10 insofar as 180 days of credits were restored.

11 The Computation Review Hearing was held on January 13, 1998.  
12 Petitioner's main concern at this hearing was that the mandates for  
13 the 1996 credit restoration were not applied by the case record  
14 manager, rendering his EPRD incorrect. (Pet'r Ex. I, Computation  
15 Review Hearing, B.D. Chastain, Corr. Case Rec. Manager, dated  
16 January 13, 1998.)

17 (2) Analysis

18 The Court has undertaken an independent examination of the  
19 entire record for 1996 and has found that Petitioner provides no  
20 factual support for his conclusory allegations that the CDCR failed  
21 to comply with the mandates of his 1996 credit restoration.  
22 Contrary to Petitioner's contention, the record shows that his file  
23 was audited on April 9, 1997 and December 8, 1997 to determine why  
24

---

25  
26 <sup>14</sup> The record also indicates that a thirty day credit restoration  
27 was made for January 30, 1998; a sixty one day credit restoration was  
28 made for January 30, 1999; a fifteen day credit restoration was made  
for August 8, 1999; and a ninety day credit restoration was made for  
March 7, 2001. (Pet'r Ex. K, Classification - Credit Restoration,  
dated October 11, 2001.)

1 his EPRD changed from 2002 to 2004. The Computation Review Hearing  
2 on January 13, 1998, indicates that Petitioner was indeed granted  
3 credit restoration after his file was audited and after the  
4 committee hearings because his EPRD changed from June 22, 2004 to  
5 May 11, 2002.

6 Moreover, Petitioner earned no custody credit and was later  
7 deprived of conduct credits as punishment for subsequent behavior  
8 and confinement to the SHU. In addition, the LSS forms submitted  
9 by Petitioner, purportedly to establish CDCR's "errors of  
10 miscalculations of sentence and confirmation of discrepancies," do  
11 not conflict with the calculations displayed in the exhibits  
12 submitted by Respondent. (Pet'r Ex. J, 1996 LSS Forms.) Both the  
13 CDCR's Calculation Worksheets and the LSS forms reflect an EPRD of  
14 2002 based on credits applied through July, 1996. These documents  
15 simply do not support Petitioner's claim that his EPRD was  
16 miscalculated.

17  
18 As noted, Petitioner's EPRD was estimated at May 11, 2002.  
19 The rules for calculating worktime credit provide that an inmate's  
20 EPRD is projected each time there is a change in credit-earning  
21 status. Cal. Penal Code § 2932(e); Cal. Code Regs. tit. 15, § 3043  
22 (c)(5). Thus, Petitioner's May 11, 2002 EPRD was only an estimated  
23 or prospective date, which was subject to change should any  
24 subsequent violation come within the provisions of California Penal  
25 Code § 2933.6. (Resp' Ex. B, Calculation Worksheet, sample 24.)

26 The Court finds that there is no merit to Petitioner's claim  
27 that his right to due process was violated by the CDCR's alleged  
28 miscalculation of his EPRD after his SHU confinement in 1996. The



1 Court DENIES Petitioner's claim for relief, based on the facts  
2 explained in the February 21, 1997 Director's Level Appeal Decision  
3 and the January 13, 1998 Computation Review Hearing, during which  
4 his revised EPRD of May 11, 2002 was found to be correct.

5 Given the absence of any support for his allegations, it  
6 cannot be said that the denial of Petitioner's claim "resulted in  
7 a decision that was based on an unreasonable determination of the  
8 facts in light of the evidence presented in the State court  
9 proceedings." 28 U.S.C. § 2254(e)(2). Moreover, the state  
10 court's summary rejection of this claims was not contrary to, or  
11 an unreasonable application of, clearly established Supreme Court  
12 precedent, nor was it based on an unreasonable determination of  
13 the facts in light of the evidence presented. 28 U.S.C.  
14 § 2254(d)(1)(2).

15 Accordingly, Petitioner is not entitled to the writ on his  
16 due process claim based on a miscalculation of credits during his  
17 SHU confinement in 1996.

18 c. EPRD After SHU Confinement During Various  
19 Periods from 2001 to 2005

20 (1) Background

21 Petitioner alleges that his due process rights were violated  
22 when the CDCR miscalculated his EPRD after his SHU confinement  
23 during various periods from 2001 to 2005. He further alleges that  
24 the Computation Review Hearings of March 15, 2002, and any  
25 subsequent related administrative appeals and computation review  
26 hearings violated his due process.

27 To support his claim, Petitioner submits numerous exhibits to  
28 demonstrate his "constant and continuous attempts at trying to get

1 CDCR and its employees to correct their errors of miscalculation of  
2 [his] sentence." (Pet'r Ex. L, Traverse at 1.)

3 The Court examines Petitioner's claim by reviewing the facts  
4 addressed by the March 15, 2002 Computation Review Hearing and the  
5 June 27, 2002 Director's Level Appeal Decision and as well as his  
6 subsequent related appeals and computation review hearings,  
7 including the October 4, 2005 Computation Review Hearing and the  
8 October 13, 2005 Second Level Review Decision.

9 (2) Analysis

10 Based on a review of the record, the Court finds that the flaw  
11 in Petitioner's argument is that he has overlooked the CDCR's  
12 recalculation of his EPRD upon the denial or loss of credit through  
13 disciplinary action, and upon the restoration of previously denied  
14 or lost credits at six-month intervals. Cal. Penal Code § 2932  
15 (e); Cal. Code Regs. tit. 15, § 3043 (c)(5)(B).

16 Applying California Penal Code § 2933, California courts have  
17 held that inmates who are serving their determinate prison  
18 sentences may earn prison conduct credits to shorten the period of  
19 incarceration. People v. Cooper, 27 Cal. 4th 38, 40 (2002); Cal.  
20 Penal Code § 2933 (worktime credits). However, California courts  
21 have also held that a disciplinary loss of credits may be applied  
22 against credits that have been earned and those that have yet to be  
23 earned. People v. Johnson, 120 Cal. App. 3d 808, 813-814, (1981);  
24 People v. Zuniga, 108 Cal. App. 3d 739, 743-744, (1980); In re  
25 Walrath, 106 Cal. App. 3d 426, 431 (1980); In re Cowen, 27 Cal.2d  
26 637, 640 (1946).

27  
28 Here, Petitioner was found to have committed multiple CDC-115

1 violations from 2001 to 2005. Therefore, he was confined in the  
2 SHU and classified as a D-2 status inmate for purposes of worktime  
3 credits at different periods during that time frame. Petitioner's  
4 suggested calculation pursuant to California Penal Code § 2933 is  
5 unavailing because it does not take into consideration the CDCR's  
6 administrative duties under California Penal Code § 2933 with  
7 respect to inmates, like Petitioner, who come within the provision  
8 of California Penal Code § 2933.6(b)(3)-(4). Because the EPRD acts  
9 as an incentive for inmates to participate in work programs  
10 pursuant to California Penal Code § 2933, any change in their  
11 classification impacts the EPRD and their attempts to earn any  
12 worktime/goodtime credits in the future.

13 The Court finds that there is no merit to Petitioner's claim  
14 that his right to due process was violated by the CDCR's alleged  
15 miscalculation of his EPRD after his SHU confinement during various  
16 periods from 2001 to 2005. The Court DENIES Petitioner's claim for  
17 relief, based on the facts explained in the June 27, 2002  
18 Director's Level Appeal Decision, the October 13, 2005 Second Level  
19 Appeal Response, as well as the March 15, 2002 and October 4, 2005  
20 Computation Review Hearings, which verified that his CRD was  
21 September 28, 2007.<sup>15</sup>

22 Accordingly, Petitioner is not entitled to the writ on his due  
23 process claim based on a miscalculation of his EPRD after his SHU  
24 confinement during various periods from 2001 to 2005.  
25

26  
27  
28 <sup>15</sup> While the October 4, 2005 Computation Review Hearing does not  
mention his EPRD, the record shows that Petitioner's EPRD was August  
12, 2007.

2. Inaccurate Worktime Credit Claim

Petitioner alleges that he did not receive accurate worktime credits for a period of almost twelve years when he had worked for twenty-eight months.

Contrary to Petitioner's assumption, as discussed above, California has not created a protected liberty interest in earning credits pursuant to California Penal Code § 2933.

Petitioner's claim that the CDCR's denial of worktime credits violated his state constitutional rights is not cognizable in a federal habeas action, because generally, issues of state law are not cognizable on federal habeas. Estelle, 502 U.S. at 67 ("We have stated many times that federal habeas corpus relief does not lie for errors of state law.") (quoting Lewis v. Jeffers, 497 U.S. 764, 780 (1990)); Gilmore v. Taylor, 508 U.S. 333, 348-49 (1993) (O'Connor, J., concurring) ("mere error of state law, one that does not rise to the level of a constitutional violation, may not be corrected on federal habeas"). Nor does the Constitution guarantee good-time credit for satisfactory behavior while in prison. Wolff, 418 U.S. at 557.

Further, the record shows that Petitioner was awarded half-time work credits, i.e., one day of credit for each two days served. (Resp't Ex. B, Calculation Worksheets; Traverse Ex. M, Second Level Appeal Decision dated October 13, 2005.) Petitioner's subsequent violations and re-assignments to D-1 and D-2 status during the almost twelve-year period when he worked for twenty-eight months left him subject to restrictions imposed by the California penal system. See Wolff, 418 U.S. at 556. The record

1 shows that the State followed the "minimum due process appropriate  
2 to the circumstances to ensure that [Petitioner's] liberty [was]  
3 not arbitrarily abrogated." Haygood, 769 F.2d at 1355.

4 The state court's rejection of Petitioner's claim was not  
5 contrary to, or an unreasonable application of, clearly established  
6 Supreme Court precedent, nor was it based on an unreasonable  
7 determination of the facts in light of the evidence presented. 28  
8 U.S.C. § 2254(d)(1)(2). Further, Petitioner has not demonstrated  
9 that the state court's denial of this claim "resulted in a decision  
10 that was based on an unreasonable determination of the facts in  
11 light of the evidence presented in the state court proceedings."  
12 28 U.S.C. § 2254(e)(2).

13 Accordingly, Petitioner is not entitled to the writ on this  
14 due process claim based on a denial of worktime credit.

15  
16 CONCLUSION

17 For the foregoing reasons, the petition for a writ of habeas  
18 corpus is DENIED. All pending motions are TERMINATED. The Clerk  
19 of the Court shall enter judgment and close the file.

20 IT IS SO ORDERED.

21 DATED: 9/20/07

22   
23 CLAUDIA WILKEN  
24 United States District Judge  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PHILLIPS,

Plaintiff,

v.

MCGRATH et al,

Defendant.

Case Number: CV04-02975 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 20, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: September 20, 2007

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California